



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2011-0040; Notice 2]

Forest River, Inc., Denial of

Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Notice of Petition Denial.

**SUMMARY:** Forest River, Inc. (Forest River), has determined that approximately 2,741 model year 2009-2011 R-Pod travel trailers that it manufactured from October 27, 2008 through November 30, 2010, fail to meet the requirements of paragraph S5.1.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Forest River has filed an appropriate report, dated December 14, 2010 pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Forest River has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Forest River's petition was published, with a 30-day public comment period, on August 29, 2011, in the

Federal Register (76 FR 53715). Thirty-four<sup>1</sup> comments were received. To view the petition, comments, and all supporting documents log onto the Federal Docket Management System Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2011-0040."

**FOR FURTHER INFORMATION CONTACT:** For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-7002.

**RELEVANT REQUIREMENTS OF FMVSS No. 108:** Among other things, FMVSS No. 108 requires trailers that are 80 or more inches in overall width to be equipped with three red rear identification lamps, two red rear clearance lamps, and two amber front clearance lamps.

**SUMMARY OF FOREST RIVERS'S PETITION:**

*Vehicles involved:* Forest River estimates that a total of approximately 2,741 model year 2009-2011 R-Pod model travel trailers were not manufactured with rear red identification lamps, rear red clearance lamps, and front amber clearance lamps. Of these, 2,697 were manufactured in Forest River's Surveyor Division plant in Goshen, Indiana and 44 were manufactured in its Surveyor Division plant in Dallas, Oregon.

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<sup>1</sup> A 35<sup>th</sup> comment was received but appeared to be a duplicate entry.

*Noncompliance:* Forest River described the noncompliance as the absence of the clearance lamps and marker lamps required by paragraph S5.1.1 of FMVSS No. 108.

Forest River stated that its original interpretation of the requirements of FMVSS No. 108 caused it to believe that because the bodies of the subject trailers, not including the fenders, are less than 80 inches in width, clearance lamps and marker lamps were not required.

Forest River further explained that based on a consumer complaint NHTSA's Office of Vehicle Safety Compliance (OVSC) inspected a number of the subject trailers and found that, based on the width of the trailers, including the fenders, that clearance lamps and marker lamps were required on the trailers due to the requirements of paragraph S5.1.1, Table 1 of FMVSS No. 108.

In its petition Forest River argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

- 1) The cost of correcting the noncompliance is substantial.
- 2) Installation of clearance lamps and marker lamps on a fully assembled trailer has the potential of causing deterioration of the trailer if the remedy is not completed correctly.

3) "The box of the unit [subject trailer] is under the 80 inch width and is properly marked according to Table IV of [49 CFR] 571.108. The fenders are low on each side of the unit."

Forest River additionally states that it has corrected the noncompliance so that future production of its R-Pod travel trailer will conform to all applicable requirements of FMVSS No. 108.

Forest River believes that the noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

**COMMENTS:**

The agency received 34 comments from, primarily, owners of Forest River trailers. 33 of those commenters supported denial of this petition, (one commenter did not offer an opinion) and 29 commenters indicated their belief that this was a safety issue (the remaining commenters did not offer an opinion).

Regarding the vehicle width, Rosemary Dingus commented that the fenders extend "about a foot from the sides of the trailer," and Jeffrey Stephens commented that the overall width of his trailer is 97 inches, fender to fender.

## **NHTSA'S CONSIDERATION OF FOREST RIVER'S INCONSEQUENTIALITY**

### **PETITION:**

#### *General Principles:*

Federal motor vehicle safety standards are adopted only after the agency has determined, following notice and comment, that the performance requirements are objective and practicable and "meet the need for motor vehicle safety." See 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118-30120.

However, Congress has recognized that, under some limited circumstances, a noncompliance could be "inconsequential" to motor vehicle safety. "Inconsequential" is not defined either in the statute or in NHTSA's regulations. Rather, the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The key issue in determining inconsequentiality is whether the noncompliance in question is likely to increase the safety risk

to individuals of accidents or to individual occupants who experience the type of injurious event against which the standard was designed to protect. *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897 (Apr. 14, 2004).

There have been instances in the past in which NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, there have been instances where NHTSA granted inconsequentiality petitions regarding noncompliance with labeling requirements. *See, e.g., General Motors Corp., Grant of Application for Decision of Inconsequential Noncompliance*, 61 FR 60746 (Nov. 29, 1996) (noncompliance with FMVSS No. 115). More rarely, NHTSA has granted inconsequentiality petitions in cases of noncompliance with performance requirements where the noncompliance was determined to be so minor as to be inconsequential—for example, where the noncompliance is expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers. *See, e.g., General Motors Corp., Grant of Application for Decision of Inconsequential Noncompliance*, 63 FR 70179 (Dec. 18, 1998) (noncompliance with FMVSS No. 108); *Subaru of America, Inc., Grant of Application for Decision of Inconsequential Noncompliance*, 66 FR 18354 (Apr. 6, 2001) (noncompliance with FMVSS No. 108).

On the other hand, NHTSA has denied petitions for inconsequential noncompliance where required equipment is completely missing from the vehicle. For example, NHTSA denied a petition for travel trailers not equipped with rear identification lamps. *Weekend Warrior Trailers, Inc., Denial of Petition for Decision of Inconsequential Noncompliance*, 71 FR 5409 (Feb. 1, 2006). In addition, NHTSA has denied inconsequentiality petitions for trailers that were equipped with clearance and identification lamps that did not meet the minimum photometry requirements. *Utilimaster Corporation; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 33603 (June 22, 2001).

*NHTSA's Analysis of Forest River's Arguments in Support of its Petition:*

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

First, Forest River asserts that the box of the subject vehicles is under the 80 inch width and is properly marked according to Table IV of 49 CFR 571.108, and that the fenders are low on each side of the unit. The agency finds this assertion unavailing. Forest River did not equip the subject trailers with identification or clearance lamps, all of which have been required on wide trailers since January 1, 1969. The

ability of motorists to distinguish wide trailers from passenger vehicles is an essential component of crash avoidance because of size, maneuvering, and speed differences between the two types of vehicles. High mounted identification lamps uniquely identify wide trailers and do so with the longest possible sight preview of the lamps. Clearance lamps show the overall width of the vehicle. Therefore, the absence of identification and clearance lamps on the subject trailers increases the risk of a crash involving these trailers.

In order to discern the requirements with which it must comply, a manufacturer must first determine the overall width of its vehicle. The term "overall width" of a vehicle was first published in the Federal Register on March 1, 1967, (see 32 FR 3390) and is described in Note 1 of Tables I and II as "the nominal design dimension of the widest part of the vehicle, exclusive of . . . flexible fender extensions . . . ." Thus, an overall width determination does not have to include flexible fender extensions. Forest River claims that "the body" of the subject trailers, exclusive of fender extensions, is less than 80 inches in overall width. However, contrary to Forest River's view, the steel panels that cover the wheel/tire assemblies of the subject trailers are clearly the fender itself, and not a flexible extension of a fender. Further, the wheel/tire



assemblies themselves are located entirely outside the "the body" of the trailer.

Second, Forest River argues that the cost of correcting the noncompliance is substantial. The statute does not include cost as a factor in determining whether a noncompliance is inconsequential. With respect to at least some noncompliances, such as for example those involving a seat belt or air bag that was missing or did not work, cost would not be a factor. Moreover, the manufacturer of the noncomplying vehicle that is missing a required item of equipment, such as the lamps here, has saved money by not including the item on the vehicles as manufactured and sold. In any event, Forest River has not demonstrated that the costs should justify an exemption. Forest River hypothesizes that the costs could be slightly over a million dollars by multiplying the number of trailers by a unit cost for each of the recalled trailers. In its calculation, Forest River estimates the labor cost at \$100/hour. However, according to the U.S. Department of Labor, automotive mechanics earn, on average, only \$17.21 per hour.<sup>2</sup> In addition, the million dollar figure represents an upper bound that assumes that all trailers will be remedied. The completion rate for recent noncompliance recalls of recreational trailers has been

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<sup>2</sup> Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 Edition, available at <http://www.bls.gov/ooh/Installation-Maintenance-and-Repair/Automotive-service-technicians-and-mechanics.htm> (last visited April 25, 2012).

approximately 50 percent. Therefore, the cost to Forest River of correcting the noncompliant trailers will likely be substantially less than the million-dollar cost Forest River estimates based on the remedy being performed on all 2,741 subject trailers.

Third, Forest River argues that remedying the subject trailers has the potential of causing deterioration of the vehicles if the remedy is not completed correctly. Unfortunately, it is not uncommon for manufacturers to present ways that a recall could be implemented improperly in order to avoid implementing recalls. However, problems with developing or implementing a remedy are not grounds for granting an inconsequentiality petition. *See Blue Bird Body Company; Denial of Application for Decision of Inconsequential Noncompliance*, 65 FR 48822 at 48823 (Aug. 9, 2000)).

*Decision:* In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Forest River's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

**Issued on:** May 16, 2012

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Nancy Lummen Lewis  
Associate Administrator  
for Enforcement

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